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**UNITED STATES DEPARTMENT OF COMMERCE
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VB

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/479,038	06/07/95	DROHAN	1327.0440006

HM12/1105
STERNE KESSLER GOLDSTEIN AND FOX
1100 NEW YORK AVENUE N W
SUITE 600
WASHINGTON DC 20005-3934

EXAMINER
ZEMAN, M

ART UNIT	PAPER NUMBER
1643	25

DATE MAILED: 11/05/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

08/479,038

Applicant(s)

DROHAN ET AL.

Examiner

Mary K Zeman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- 1) ☒ Responsive to communication(s) filed on 23 August 1999.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13, 17-32 and 34-37 is/are pending in the application.
- 4a) Of the above claim(s) 1-11 and 21-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12, 13, 17-20, 24-32 and 34-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some * c) ☐ None of the CERTIFIED copies of the priority documents have been:
1. ☐ received.
2. ☐ received in Application No. (Series Code / Serial Number) _____.
3. ☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

- 14) ☐ Notice of References Cited (PTO-892)
- 15) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 16) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 17) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 18) ☐ Notice of Informal Patent Application (PTO-152)
- 19) ☐ Other: _____

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DETAILED ACTION

Claims 1-13, 17-32, and 34-37 are pending in this application. Claims 1-11 and 21-23 have been withdrawn from consideration as being drawn to a non-elected invention. These claims should be canceled in response to this Action.

Applicant's amendment, filed 8/23/99 has been entered, and fully considered. In view of the amendment, and the declaration by Dr McMahon, all of the art rejections have been withdrawn. Also, all rejections made under 35 U.S.C. 112, first and second paragraphs, have been withdrawn.

Claim 12 is objected to because of the following informalities: Claim 12 does not end in a period, as required. Appropriate correction is required.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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Claims 12, 13, 17-20, 24-32 and 34-37 remain provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the pending claims of copending Application No. 08/485,883. Although the conflicting claims are not identical, they are not patentably distinct from each other because both applications are directed to fibrin sealant systems which deliver various supplements or medicaments.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 12, 13, 17-20, 24-32 and 34-37 remain provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the pending claims of copending Application No. 08/474,086. Although the conflicting claims are not identical, they are not patentably distinct from each other because both applications are directed to fibrin sealant systems which deliver various supplements or medicaments.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 12, 13, 17-20, 24-32 and 34-37 remain provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the pending claims of copending Application No. 08/474,084. Although the conflicting claims are not identical, they are not patentably distinct from each other because both applications are directed to fibrin sealant systems which deliver various supplements or medicaments.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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Conclusion

No claim is allowed.

The following is a statement of reasons for the indication of allowable subject matter: Applicant has provided a composition with surprising and unobvious characteristics. The supplement delivery system offers extended release of that supplement beyond what has been described in the art.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Since the fee set forth in 37 CFR 1.17(r) for a first submission subsequent to a final rejection has been previously paid, applicant, under 37 CFR 1.129(a), is entitled to have a second submission entered and considered on the merits if, prior to abandonment, the second submission and the fee set forth in 37 CFR 1.17(r) are filed prior to the filing of an appeal brief under 37 CFR 1.192. Upon the timely filing of a second submission and the appropriate fee of \$XXX for

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a small entity under 37 CFR 1.17(r), the finality of the previous Office action will be withdrawn. If a notice of appeal and the appeal fee set forth in 37 CFR 1.17(e) were filed prior to or with the payment of the fee set forth in 37 CFR 1.17(r), the payment of the fee set forth in 37 CFR 1.17(r) by applicant will be construed as a request to dismiss the appeal and to continue prosecution under 37 CFR 1.129(a). In view of 35 U.S.C. 132, no amendment considered as a result of payment of the fee set forth in 37 CFR 1.17(r) may introduce new matter into the disclosure of the application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary K Zeman whose telephone number is (703) 305-7133. The examiner can be reached between the hours of 7:30 am and 5:00 pm Monday through Thursday, and on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, Donna Wortman, Primary Examiner, can be reached on (703) 308-1032.

The fax number for this Art Unit is (703) 305-7401.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

mkz
November 2, 1999


DONNA WORTMAN
PRIMARY EXAMINER